

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL

75-4229

United States Court of Appeals

For the Second Circuit.

Nos. 75-4229; 75-4251

GUAN CHOW TOK,
Petitioner,

v.

IMMIGRATION AND NATURALIZATION SERVICE,
Respondent.

PAK SUEN STEPHEN LAI,
Petitioner,

v.

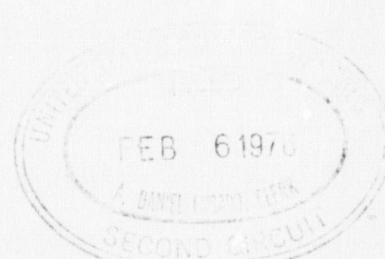
IMMIGRATION AND NATURALIZATION SERVICE,
Respondent.

Petition for Review of Order of
Board of Immigration Appeals

Appendix

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DECISION AND ORDER OF THE BOARD OF IMMIGRATION APPEALS,
DATED SEPTEMBER 12, 1975

UNITED STATES DEPARTMENT OF JUSTICE
Board of Immigration Appeals
Washington, D.C. 20530

SEPT. 12, 1975

Files: A30 063 870 - New York
A15 952 757 - Atlanta

In re: PAK SUEN STEPHEN LAI
GUAN CHOW TOK

IN DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT No. 1: Joseph Marro, Esq.
Fried, Fragomen & Del Rey, P.C.
515 Madison Avenue
New York, New York 10022

ON BEHALF OF RESPONDENT No. 2: Martin Rothstein, Esq.
Fried, Fragomen & Del Rey, P.C.
515 Madison Avenue
New York, New York 10022

ON BEHALF OF I&N SERVICE: Jesse M. Sellers
Appellate Trial Attorney

ORAL ARGUMENT: June 12, 1975

CHARGES:

Order: Sec. 241(a)(11), I&N Act (8 U.S.C. 1251
(a)(11) - Convicted of a law relating
to the possession and distribution of
narcotics (both respondents)

APPLICATIONS: Termination of proceedings (both respondents)

We shall consider these two cases together
inasmuch as they raise issues which are almost identical.
Lai is appealing from an order of deportation entered by

the immigration judge on February 7, 1975. Tok is appealing from an order of deportation entered by the immigration judge on November 21, 1974. Both appeals will be dismissed.

Lai is a 25 year old married male alien, a native of Hong Kong and citizen of the United Kingdom and Colonies, who was admitted to the United States in possession of an immigrant visa on December 7, 1970. He was convicted of the offense of possession of heroin, on January 23, 1973, upon his plea of guilty, by the United States District Court of the Southern District of New York. Tok is a 49 year old married male alien, a native and citizen of China, who was admitted to the United States in possession of an immigrant visa on June 11, 1969. He was convicted by the United States District Court for the Southern District of New York, on January 3, 1973, of the offense of unlawful possession and distribution of heroin.

Both aliens are charged with being deportable pursuant to section 241(a)(11) of the Act because of their respective convictions for an offense relating to narcotics. Counsel argues that the immigration judge should have exercised discretion and in the exercise thereof should have refused to find the respondents

deportable in view of the equities in their cases. In support of this argument, counsel cites United States v. Santelises, 476 F.2d 787 (2 Cir. 1973) for the proposition that deportation is a discretionary matter. He argues that the immigration judge, therefore, must always exercise discretion in reaching a finding of deportability. Santelises does not stand for that proposition. Santelises contended that his plea of guilty had not been voluntary, because he was not warned that deportation [under section 241(a)(5) of the Act] would be a consequence of his conviction [of an offense relating to the use of fraudulent documents]. The court pointed out, in dicta, that deportation was not an automatic consequence of the conviction because the Attorney General has discretion whether or not to institute deportation proceedings. That decision relates to the prosecutorial functions of the Attorney General, which have been delegated by him, pursuant to regulations, to district directors, deputy district directors, assistant district directors for investigation, and certain officers in charge, 8 C.F.R. 242.1(a). Prosecutorial functions do not lie with the Board or the immigration judges. Once proceedings have been begun, it is not within the province of the immigration judge (or this Board on appeal) to review the wisdom of the District

Director's action in starting the proceedings, but rather to determine whether the deportation charges are sustained by the requisite evidence, Matter of Geronimo, 13 I&N Dec. 680 (BIA 1971); Matter of Lennon, Interim Decision 2304 (BIA 1974). Prosecutorial and quasi-judicial functions in deportation proceedings have been carefully separated by the Attorney General in order to accord aliens a fair hearing. The quasi-judicial functions are totally independent of the prosecutorial functions. See Order No. 45-54, Office of the Attorney General (April 23, 1954).

In his second and third arguments, counsel challenges the constitutionality of the deportation statutes. He asserts that deportation works a cruel and unusual punishment and that deportation denies aliens equal protection of the laws. It is not within the province of this Board to pass on the constitutionality of the statutes which we administer, Matter of L-, 4 I&N Dec. 556 (BIA 1951).

Counsel further alleges that the government should be estopped from deporting respondent Lai because during the course of his criminal proceedings, the government promised him that he would not be deported if he cooperated with the prosecutors and pled guilty (both of which he did). Assuming, without deciding, that the

TRANSCRIPT OF THE DEPORTATION

government could be prevented from deporting an alien on the ground of estoppel, 1/ there is no evidence in the record before us that any such promise was made to the respondent.

ORDER: The appeals are dismissed.

Chairman

1/ The case counsel cites in support of this argument, Geisser v. United States, 513 F.2d 862 (5 Cir. 1975), concerned the place of deportation; the case involved a promise made by the government during plea bargaining, to use best efforts to prevent deportation to Switzerland, which country sought to extradite the alien and where the alien feared for her safety. Geisser did not claim that she had been promised that she would not be deported at all, as is alleged here.

DECISION OF THE IMMIGRATION JUDGE, DATED NOVEMBER
21, 1974 PERTAINING TO PETITIONER, TOK

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization
Service

File: A-15 952 757 - Atlanta, Georgia November 21, 1974

In The Matter Of:

GUAN CHOW TOK)
) IN DEPORTATION PROCEEDINGS
RESPONDENT)

CHARGE : I&N Act-Section 241(a)(11)-(8 U.S.C. 1251(a)(11))-
 Convicted of a law relating to the possession
 and distribution of narcotics.

APPLICATION : Motion to dismiss; voluntary departure,
 in the alternative.

IN BEHALF OF THE RESPONDENT: IN BEHALF OF THE SERVICE:

Martin Rothstein, Esq.
Fried, Fragomen
& Del Rey, P.C.
515 Madison Avenue
New York, N.Y. 10022

Henry J. Scroope, Jr., Esq.
Trial Attorney
Miami, Florida

ORAL DECISION OF THE IMMIGRATION JUDGE

This case relates to a 49-year old married male, a native of China and a citizen of China, who on June 11, 1969, was admitted to the United States as a permanent resident. The Order to Show Cause alleges that on January 3, 1973, he was convicted in the United States District Court for the Southern District of New York of conspiring to violate Section 812(a)(1) and 841(b)(1)(A) of Title 21, U.S. Code, Section 846, unlawfully, intentionally and knowingly

distributing and possessing a Schedule I narcotic drug controlled substance; to wit, heroin; in violation of Title 2, Section 821, 841(a)(1), 841(b)(A) and Title 2, Section 2. Respondent is charged with deportability, pursuant to Section 241(a)(11) of the Immigration and Nationality Act, in that, at any time he has been convicted of a conspiracy to violate any law or regulation relating to the illicit possession of or traffic in narcotic drugs.

The respondent, through Counsel, admitted all of the allegations contained in the Order to Show Cause, with the exception of the second portion of allegation No. 2, and whether or not he is a citizen of the Republic of China on Taiwan is contested.

The Government has offered into evidence, and it has been accepted as such, a record of conviction showing that the respondent was convicted as charged on his plea of not guilty.

It is Counsel's contention that, notwithstanding the conviction, the respondent is not deportable from the United States. He has moved that deportation proceedings in this case not be instituted or that an order of deportation not be entered, it being his argument that

the Attorney General, who has delegated his powers to the Immigration Judge to make determinations in these cases can, within the ambit of his authority, withhold the institution of or stay execution of an order of deportation. I believe Counsel has gone even further by saying that an order need not be entered by the Immigration Judge, in his discretion.

Counsel has submitted for the edification of this Court, the decision of the Second Circuit Court of Appeals of the United States in *United States of America v. Amadeo Augusto Lucianos Santelises*, cited at 476 F. 2d, 787. He states that the determination made by the Court in that case is applicable to the case at bar. I have read the case, am acquainted with it, and I disagree with Counsel. I find that in that case, the Court of Appeals merely noted that conviction of an alien, per se, does not ripen into deportation without more. The Court referred to a conviction under Section 1546 of Title 18, which can lead to a charge of deportability under Section 241(a)(5). It said that the conviction alone did not make the element of deportation certain and absolute without institution of proceedings and a finding of deportability. It is true that the Attorney General need not institute proceedings against an alien nor carry

out an order of deportation, if entered, but I disagree with Counsel that an Immigration Judge can exercise this exact power that the Attorney General has. Although I do not agree with Counsel for the Government that the Immigration Judge has no power to stay deportation, because the regulations specifically confer that power on him, he may not exercise that power as a discretionary right to prevent deportation of an alien. He should only do so in cases where motions to reopen have been made and further adjudication is necessary or where respondents who have been ordered deported become eligible for some discretionary relief under the Statute. There is no discretion conferred on Immigration Judges to withhold institution of proceedings or withhold orders of deportation. When aliens come before him who are deportable by reason of a conviction and he orders that they are clearly deportable as charged, he may not, in the absence of some very strong and demanding circumstance necessary to the proper administration of justice, withhold execution of his decision.

Since the respondent is ineligible for discretionary relief and I find that he is deportable as charged, his request for voluntary departure is denied pursuant to the provisions of Section 244(e) of the Act and it is

ORDERED that the respondent be deported to Taiwan on the charge contained in the Order to Show Cause, and

IT IS FURTHER ORDERED that if the afore-named country advises the Attorney General that it is unwilling to accept the respondent into its territory, or fails to advise the Attorney General within three months following original inquiry whether or not it will accept the respondent into its territory, the respondent shall then be deported to Hong Kong.

s/ Joseph W. Monsanto

Immigration Judge

846 U.S. Code) and of unlawfully, intentionally and knowingly distributing and possessing with intent to distribute a Schedule I narcotic-drug controlled substance, to wit, heroin in violation of Title 21, Sections 812, 841(a)(1), 841(b)(1)(A), and Title 18, Section 2.

AND on the basis of the foregoing allegations, it is charged that you are subject to deportation pursuant to the following provision(s) of law:

Section 241(a)(11) of the Immigration and Nationality Act, in that, you at any time have been convicted of a conspiracy to violate any law or regulation relating to the illicit traffic in conspiring to violate Sections 812(a)(1), 841(b)(1)(A) of Title 21, U.S. Code, (Title 21 Section 846 U.S. Code) and of unlawfully, intentionally and knowingly distributing and possessing with intent to distribute a Schedule I narcotic-drug controlled substance, to wit, heroin in violation of Title 21, Sections 812, 841(a)(1), 841(b)(1)(A), and Title 18, Section 2.

WHEREFORE, YOU ARE ORDERED to appear for hearing before a Special Inquiry Officer of the Immigration and Naturalization Service of the United States Department of Justice at date, place and time to be set, and show cause why you should not be deported from the United States on the charge(s) set forth above.

Dated: March 29, 1973
Form I-221
(Rev. 3-30-67)

IMMIGRATION AND NATURALIZATION SERVICE
s/ Maurice J. Kiley
DEPUTY DISTRICT DIRECTOR
NEW YORK DISTRICT

TRANSCRIPT OF THE DEPORTATION HEARING, PAGE 14,
PERTAINING TO PETITIONER, TOK

1 jurisdiction and that is to re-try the case in which he was found
2 guilty by jury. We cannot re-try that case. Therefore, your
3 question on discussion addressing itself to that portion of the case,
4 I will have to consider is immaterial at this time. Irrelevant.
5

6 A Your Honor, one further question.

7 COUNSEL TO RESPONDENT:

8 Q While you have been in prison, Mr. Tok, have you cooperated with
9 Federal authorities to help them in the exercise of law enforcement
10 functions?
11

12 A I helped the Government twice as a witness.

13 Q Who did you testify against?

14 A One man by name of Cheng and one by the name Ling.

15 Q And what were they charged with?

16 A They increased their punishment.

17 Q I have no further questions of the witness, Your Honor.
18

19 IMMIGRATION JUDGE TO TRIAL ATTORNEY:

20 Q Mr. Scroope, do you have any questions of the witness?

21 A No, Your Honor.

22 IMMIGRATION JUDGE TO COUNSEL:

23 Q Very well. Counsel, your petition in this case, as I now understand
24 it and you have enunciated it by filing with this Immigration Court
25 the copy of the Second Circuit Court's decision in the matter of
26

DECISION OF THE IMMIGRATION JUDGE, DATED
FEBRUARY 7, 1975, RELATING TO PETITIONER, LAI

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

File: 30 063 (7) - New York, N.Y.

February 7, 1975

In the Matter of:)

PAI SUN CHING LAI)

IN DEPORTATION PROCEEDINGS

- Respondent -)

CHARGE: 1. N. Act - Section 241(a)(1) - (8 U.S.C. 1251(a)(1)) -
conviction of law relating to illicit possession of
narcotic drug.

APPLICATION: Termination of deportation proceedings.

In Behalf of Respondent:

In Behalf of Service:

Fried, Fragonson & Del Rey, Esqs.
515 Madison Avenue
New York, N.Y.
Joseph Harro, Esq. of counsel

Anthony M. De Gaeto, Esq.
Trial Attorney
New York, N.Y. 10007

ORAL DECISION OF THE IMMIGRATION JUDGE

The respondent is a 25 year old married male alien, a native of Hong Kong and a citizen of the United Kingdom and Colonies, who was admitted for permanent residence in the United States on December 7, 1970. On a plea of guilty on January 23rd, 1973 he was convicted in the U.S. District Court of the Southern District of New York for the offense of possession of heroin, a Schedule I narcotic drug controlled substance, with the intent to distribute. He was sentenced to 18 months for each of the counts to which he pled guilty; to run concurrently. He was further placed on special parole for a term of three years to commence upon expiration of his confinement.

Section 241(a)(11) of the Immigration and Nationality Act provides for the expulsion of any alien in the United States who at any time has been convicted of a violation of or a conspiracy to violate any law or regulation relating to the illicit possession of or trafficking in a narcotic drug. The statute under which the respondent was convicted clearly falls within the aforementioned section and he is clearly deportable. The respondent contends that Section 241(a)(11) of the Immigration and Nationality Act is unconstitutional and he further claims there are other sections of the aforementioned statute which are unconstitutional. It is not within my province to render any such decision concerning the constitutionality of a statute. Further, the Board of Immigration Appeals has not held the statute to be unconstitutional and it has been upheld in numerous court decisions.

The respondent conceded the truth of the five allegations in the Order to Show Cause. The only question is the right of the government to find him deportable as a result of this conviction for the criminal possession of heroin with the intent to distribute. The evidence of record clearly indicates that this conviction warrants the finding of deportability on the charge placed by the government. Testimony was received concerning the respondent's cooperation with agents of the Narcotics Bureau and also investigators of the Immigration and Naturalization Service concerned with investigating other persons and matters dealing with narcotics. The respondent testified that he had cooperated with all such persons and is still cooperating today. This evidence was offered and accepted to enable the respondent to set forth a claim for nonpriority status so that

he would not be deported. This application can only be made to the District Director and the respondent was so advised. However, the matter was placed on the record so that it would become a permanent part of the respondent's background to aid in any future ruling if such application is made. The respondent has solely applied for termination of proceedings. His deportation however, is mandatory. The respondent has specified Hong Kong as country of deportation.

ORDER: IT IS ORDERED that the respondent be deported from the United States to Hong Kong on the charge contained in the Order to Show Cause.

Howard I. Cohen
HOWARD I. COHEN
Immigration Judge

ORDER TO SHOW CAUSE AND NOTICE OF HEARING RELATING
TO PETITIONER, LAI

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

ORDER TO SHOW CAUSE and NOTICE OF HEARING

In Deportation Proceedings under Section 242 of the Immigration and Nationality Act

UNITED STATES OF AMERICA:

In the Matter of)
PAK SUEH STEPHEN LAI)
Respondent.)

To: _____
(name)

File No. A30 053 370

c/o Federal Correctional Institution, Danbury, Connecticut
Address (number, street, city, state, and ZIP code)

UPON inquiry conducted by the Immigration and Naturalization Service, it is alleged that:

1. You are not a citizen or national of the United States;
2. You are a native of Hong Kong, B.G.C.
and a citizen of British subject of United Kingdom and Colonies;
3. You entered the United States at San Francisco, California on
or about December 7, 1970;
4. At that time you were admitted as an immigrant;
5. You were on April 24, 1973, convicted in the United States District
Court for the Southern District of New York for the offense of
possession of heroin, a Schedule I narcotic drug controlled substance,
with intent to distribute;

AND on the basis of the foregoing allegations, it is charged that you are subject to deportation pursuant to the following provision(s) of law:

Section 241(a)(11) of the Immigration and Nationality Act, in that,
you at any time have been convicted of a violation of any law or
regulation relating to the illicit possession of narcotic drugs, to
wit, possession of heroin, a Schedule I narcotic drug controlled
substance, with intent to distribute in violation of Title 21, United
States Code, Sections 812, 841(a)(1) and 341(b)(1)(A).

WHEREFORE, YOU ARE ORDERED to appear for hearing before a Special Inquiry Officer of the
Immigration and Naturalization Service of the United States Department of Justice at _____

on _____ at _____ m, and show cause why you should not be deported
from the United States on the charge(s) set forth above.

YOU WILL BE NOTIFIED AT A LATER DATE OF THE TIME AND PLACE FOR YOUR HEARING.

Dated: July 11, 1973

IMMIGRATION AND NATURALIZATION SERVICE

Form I-221
(Rev. 3-30-67)

W. J. Kennedy
(Signature and title of issuing officer)
Acty. District Director
(City and State)

NOTICE TO RESPONDENT

ANY STATEMENT YOU MAKE MAY BE USED AGAINST YOU IN DEPORTATION PROCEEDINGS

THE COPY OF THIS ORDER SERVED UPON YOU IS EVIDENCE OF YOUR ALIEN REGISTRATION WHILE YOU ARE UNDER DEPORTATION PROCEEDINGS. THE LAW REQUIRES THAT IT BE CARRIED WITH YOU AT ALL TIMES

If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Immigration and Naturalization Service. You should bring with you any affidavits or other documents which you desire to have considered in connection with your case. If any document is in a foreign language, you should bring the original and certified translation thereof. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing.

When you appear you may, if you wish, admit that the allegations contained in the Order to Show Cause are true and that you are deportable from the United States on the charges set forth therein. Such admission may constitute a waiver of any further hearing as to your deportability. If you do not admit that the allegations and charges are true, you will be given reasonable opportunity to present evidence on your own behalf, to examine the Government's evidence, and to cross-examine any witnesses presented by the Government.

You may apply at the hearing for voluntary departure in lieu of deportation. Moreover, if you appear to be eligible to acquire lawful permanent resident status the special inquiry office will explain this to you at the hearing and give you an opportunity to apply.

You will be asked during the hearing to select a country to which you choose to be deported in the event that your deportation is required by law. The special inquiry officer will also notify you concerning any other country or countries to which your deportation may be directed pursuant to law; and upon receipt of this information, you will have an opportunity to apply during the hearing for temporary withholding of deportation if you believe you would be subject to persecution in any such country on account of race, religion, or political opinion.

Failure to attend the hearing at the time and place designated hereon may result in your arrest and detention by the Immigration and Naturalization Service without further notice, or in a determination being made by the special inquiry officer in your absence.

REQUEST FOR PROMPT HEARING

To expedite determination of my case, I request an immediate hearing, and waive any right I may have to more extended notice.

Before:

(signature of respondent)

(signature and title of witnessing officer)

(date)

CERTIFICATE OF SERVICE

This order and notice were served by me on July 5, 1973 in the following manner:
(date)

~~BY AIRMAIL - CERTIFIED MAIL - RETURN RECEIPT REQUESTED~~

CC: Mr. John J. Norton
Warden
Federal Correctional Institution
Danbury, Connecticut

Ernest J. Murphy
(signature and title of employee of office)
Ernest J. Murphy, Investigator

/smb

TRANSCRIPT OF THE DEPORTATION HEARING PERTAINING
TO PETITIONER, LAI (PAGES 16 to 22A)

1 Q It will be received in evidence as Exhibit 6. Proceed.

2 A Thank you your honor.

3 COUNSEL to RESPONDENT: Q Mr. Lai after your arrest on December 5 were you
4 in fact ever contacted by an agent of the federal government or an employee
5 of the federal government?

6 TRIAL ATTORNEY to IMMIGRATION JUDGE: Q I object your honor.

7 IMMIGRATION JUDGE to TRIAL ATTORNEY: Q He didn't finish the question.

8 A I'm sorry. I apologize your honor.

9 COUNSEL to IMMIGRATION JUDGE: Q Can I proceed your honor.

10 IMMIGRATION JUDGE to COUNSEL: Yes.

11 COUNSEL to RESPONDENT: Q Were you ever in fact contacted by an agent of
12 the federal government or federal employee and requested to cooperate with
13 the government in obtaining convictions and information on suspected criminals?

14 TRIAL ATTORNEY to IMMIGRATION JUDGE: Q I object your honor.

15 IMMIGRATION JUDGE to TRIAL ATTORNEY: Q Overruled.

16 A Yes.

17 COUNSEL to RESPONDENT: Q When was the first time that you were so contacted?

18 TRIAL ATTORNEY to IMMIGRATION JUDGE: Q I object again your honor.

19 IMMIGRATION JUDGE to TRIAL ATTORNEY: Q I will assume that the government
20 will object to the line of questioning.

21 A Your honor...

22 Q I don't want any argument...

23 A I want the record to show that I am objecting--there is no basis and you
24 have no authority to go beyond the conviction to listen to the testimony
25 your honor. You are only cluttering the record.

26 Q Mr. De Gaeto I understand the government's position and I overrule the

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1 government on this point and I will permit you to answer the question.

2 A The first time they come...

3 Q Do you know the names of the agents who spoke to you in December of 1972
4 while you were in prison in West Street?

5 TRIAL ATTORNEY to IMMIGRATION JUDGE: Q I object again your honor.

6 IMMIGRATION JUDGE to TRIAL ATTORNEY: Q Overruled.

7 A Alan Kelly.

8 Q Can you spell the last name to the best of your recollection?

9 A Kelly.

10 Q Did you in fact give your cooperation to the federal government?

11 TRIAL ATTORNEY to IMMIGRATION JUDGE: Q I will object your honor?

12 IMMIGRATION JUDGE to TRIAL ATTORNEY: Q Overruled.

13 A I will direct that question your honor. I want the record to show that
14 I am objecting to every question.

15 IMMIGRATION JUDGE to COUNSEL: Q What was the question?

16 A I think I ...

17 COUNSEL to RESPONDENT: Q The question was did you in fact so cooperate?

18 A Yes.

19 Q Can you tell us how you did cooperate?

20 TRIAL ATTORNEY to IMMIGRATION JUDGE: Q Objection.

21 IMMIGRATION JUDGE to TRIAL ATTORNEY: Q Overruled.

22 COUNSEL to RESPONDENT: Q What did you do to help the government?

23 A They came to ask me to help them to-looking for somebody and who is
24 in drugs-the dealer in narcotics.

25 Q At that time you were in Westbury and first arrested, what was the amount
26 of your bond?

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1 A \$10,000.00.

2 Q Did the government then request that your bond be reduced in order to
3 allow you to cooperate with them?

4 TRIAL ATTORNEY to IMMIGRATION JUDGE: Q Objection your honor.

5 IMMIGRATION JUDGE to TRIAL ATTORNEY: Q Overruled.

6 A If I cooperated with them they would put the bond lower.

7 Q Did they reduce your bond?

8 A Yes.

9 Q To what amount?

10 A \$1,000.

11 Q \$1,000 thank you. Did you show the government agents various locations
12 in Chinatown where there was suspected criminal activity?

13 TRIAL ATTORNEY to IMMIGRATION JUDGE: Q Objection your honor.

14 IMMIGRATION JUDGE to TRIAL ATTORNEY: Q Overruled.

15 A Yes.

16 Q Did you ever act on behalf of the government as an undercover agent and
17 make a buy of a narcotic substance on behalf of the government?

18 A Yes.

19 TRIAL ATTORNEY to IMMIGRATION JUDGE: Q Objection.

20 IMMIGRATION JUDGE to TRIAL ATTORNEY: Q Overruled.

21 IMMIGRATION JUDGE: Q Let the record show the answer was yes.

22 COUNSEL to RESPONDENT: Q On how many occasions did you do this?

23 A Two.

24 Q Twice. Did you ever furnish any names or identities of various indivi-
25 duals suspected of criminal activities?

26 A Yes.

Q Did you ever identify and individual or individuals from photographs

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2.7.75

1 shown to you by agents of the federal government?

2 A Yes.

3 COUNSEL to IMMIGRATION JUDGE: Q Your honor at this time I would like to
4 offer into evidence a two page copy of the transcript before Judge Weinfeld
5 on April 24, 1973 specifically page 7 where the courts states taken into
6 account...

7 IMMIGRATION JUDGE to COUNSEL: Q Do you want to show it to Mr. De Gacto?

8 COUNSEL to IMMIGRATION JUDGE: Q I will offer it into evidence to show the
9 fact that Judge Weinfeld took into consideration the cooperation of Mr. Lai
10 for purposes of sentence.

11 TRIAL ATTORNEY to IMMIGRATION JUDGE: Q Your honor I object to introducing
12 it into evidence. It is not materiel in this case.

13 IMMIGRATION JUDGE to TRIAL ATTORNEY: Q Overruled.

14 COUNSEL to IMMIGRATION JUDGE: Q The first page there of is the cover sheet
15 your honor.

16 IMMIGRATION JUDGE to COUNSEL: Q I understand. The two sheets will be
17 received as Exhibit 7.

18 COUNSEL to RESPONDENT: Q Following your sentencing to 18 months in prison
19 were you ever contacted by agents of the government again and requested to
20 cooperate with the United States?

21 TRIAL ATTORNEY to IMMIGRATION JUDGE: Q Objection.

22 IMMIGRATION JUDGE to TRIAL ATTORNEY: Q Overruled.

23 A When I was in Danbury at 1973 December ...

24 Q So in December of '73 they approached you again while you were at Danbury
25 and requested your cooperation with regard to a criminal activity?

26 A They told me I got to... and they will help them get something for me.

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1 TRIAL ATTORNEY to IMMIGRATION JUDGE: Q Your honor I will object on the
2 ground that it is hearsay.

3 IMMIGRATION JUDGE to TRIAL ATTORNEY: Q No. Overruled.

4 COUNSEL to RESPONDENT: Q So they contacted you and said to the effect that
5 if you cooperate they would help you?

6 TRIAL ATTORNEY to IMMIGRATION JUDGE: Q Objection.

7 IMMIGRATION JUDGE to TRIAL ATTORNEY: Q Look. I'm confused Mr. De Gaeto.
8 You objected to Mr. Marro cluttering the record but objecting to this ques-
9 tion you are cluttering it even further.

10 A I am your honor.

11 Q All right. Mr. De Gaeto if you ever object on the record that there is
12 a cluttering of the record I will say that you're as much at fault as Mr.
13 Marro is. Objection sustained.

14 A Thank you.

15 IMMIGRATION JUDGE to COUNSEL: Q Mr. Marro do not lead the witness?

16 TRIAL ATTORNEY to IMMIGRATION JUDGE: Q Thank you your honor.

17 COUNSEL to RESPONDENT: Q When did you then cooperate with the government
18 following this request in December?

19 A As soon as I got out of Danbury and then the narcotics special agent...

20 IMMIGRATION JUDGE to RESPONDENT: Q Mr. Alan Kelly came to see you?

21 A Yes.

22 Q Where?

23 A In Danbury, in 1973 December. And told me I'm getting out... and to help
24 them again and this other narcotic agent Mr. ...

25 Q Mr. who?

26 A Mr. Fitzgerald.

1 COUNSEL to IMMIGRATION JUDGE: Q I think it is Fitzgerald your honor.

2 Fitzgerald (spelled)

3 IMMIGRATION JUDGE to RESPONDENT: Q Is that right-Mr. Fitzgerald?

4 A Yes. Mr. Alan Kelly to go to Boston... over New York so I got to go
5 there.

6 COUNSEL to RESPONDENT: Q When were you released on parole?

7 A May 1974.

8 Q And following your release on parole did you at that time cooperate
9 with the federal government?

10 A Yes.

11 Q How many times did you cooperate?

12 A For the first time when they came up to see me they made me go up to
13 the 13th floor Immigration Investigation Mr. Roland.

14 Q I think that Mr. Roland James.

15 IMMIGRATION JUDGE to RESPONDENT: Q Mr. Roland.

16 COUNSEL to IMMIGRATION JUDGE: Roland (spelled out)

17 A And Mr. McByrne.

18 COUNSEL to IMMIGRATION JUDGE: Q I think it's Bob McByrne your honor, Mc
19 Byrne.

20 COUNSEL to RESPONDENT: Q And what happened when you went up to see these
21 two gentlemen?

22 A Talked about cooperation with both of them.

23 Q Both of them asked you to cooperate?

24 A Yes.

25 Q Did you in fact cooperate with them?

26 A Yes.

1 Q What did you do to show your cooperation?

2 A I get them some information. Go over in Chinatown and found out some-
3 thing about the cooperation.

4 Q And did you in fact go back to Chinatown and attempt to find this infor-
5 mation out for the government?

6 TRIAL ATTORNEY to IMMIGRATION JUDGE: Q Objection?

7 IMMIGRATION JUDGE to TRIAL ATTORNEY: Q Overruled.

8 Q Did you ever provide the government with additional names?

9 A They gave me some pictures and the names ...while the Immigration and
10 narcotics both go to Chinatown and find out for them.

11 Q Did they ever request that you make another buy of narcotics for them?

12 A Yes.

13 Q Did you in fact make such a buy?

14 A Yes.

15 Q On how many occasions did you meet with the Immigration people Mr. Roland
16 and Mr. McByrne?

17 A About 3 or 4 cases.

18 Q 3 or 4 cases, or 3 or 4 times?

19 A 3 or 4 cases.

20 Q What was the last time you met with either Mr. McByrne or Mr. Roland?

21 A Last Thursday-I think the 27th of January.

22 IMMIGRATION JUDGE to RESPONDENT: Q January the 27th?

23 A Yes.

24 COUNSEL to IMMIGRATION JUDGE: Q Your honor I have no further questions of
25 Mr. Lai.

26 A30 063 870

AFFIDAVIT OF ROBERT MITCHELL, SWORN TO NOVEMBER 29, 1973

AFFIDAVIT

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

I, ROBERT MITCHELL, being duly sworn, depose and say:

1. That I am an Attorney at Law duly licensed to practice law in the State of New York, and admitted to practice in United States District Court, Southern District of New York.

2. That on or about December 6, 1972 I was assigned by the Court to represent a Stephen Lai in a criminal proceeding docket number 73 CR 1357, pending before the United States District Court, Southern District of New York.

3. That Stephen Lai was under a five count indictment involving narcotic violations which resulted in a plea of guilty being entered on April 24, 1973 on two of the five counts, to wit, violations of Title 21 Section 812, 841 (a)(1) and 841 (b)(1)(A) U.S. Code and Title 21 Section 846 U.S. Code.

4. That I discovered in my interview with Stephen Lai, that he had agreed with the Federal Narcotic Agents to be a cooperating defendant and had already had extensive meetings with them. Since my client had already begun to work closely with the Federal Agents, I felt that it would be pointless to advise my client to stand mute, or to attempt to raise technical defenses in his behalf. My sole objective therefore, was to see that my client received the most lenient treatment possible, under the circumstances. I explained that his cooperation in this case would be a factor in the negotiations for a favorable determination.

5. That in my conversations with my client, I seem to recall that I advised him of the possibility of deportation should he enter a plea of guilty. Although this did not involve the plea directly, I recall some conversation about the possibility of deportation, since I knew he was not an American citizen.

6. That I assumed my client understood what I explained to him. However, in my out of Court discussions with my client, I did not have the assistance of an interpreter. I spoke to my client only with the assistance of his brother, William, who speaks English to a certain degree. I cannot say for certain that Mr. Lai fully understood everything that was explained to him. I am not sure therefore, that he was fully aware of the possibility of deportation at the time his guilty plea was entered.

Robert Mitchell
ROBERT MITCHELL

1 hpmch

7

2 MR. THAU: She said texturally, "I didn't
3 understand the heaviness of the crime."

4 THE COURT: Miss Lai, I have difficulty in
5 understanding that statement. You are an American-born
6 girl. You have had the benefit of an upbringing in a
7 good family and a good education and opportunity of a good
8 education. You have a sister who is, I believe, a student
9 at Hunter College now, isn't that right?

10 DEFENDANT EVELYN LAI: Yes.

11 THE COURT: Are you serious that you were not
12 aware of the consequences of trafficking in drugs in heavy
13 quantities? I can't believe you are serious about that,
14 are you?

15 DEFENDANT EVELYN LAI: I am.

16 THE COURT: Taking into account the cooperation
17 of the defendant Stephen Lai, which of course does not
18 permit wiping out this offense altogether, it is very
19 serious, and, as I say, he was in the country a short
20 period of time and heavily involved in substantial
21 distribution of drugs, but it has been represented he made
22 a rather substantial contribution in terms of introduction
23 to so-called major narcotics violators, the Court imposes
24 sentence of eighteen months.

25 And in the case of the defendant Evelyn Lai, who

FRIED, FRAGOMEN & DEL REY TOR V. TMA.

STATE OF NEW YORK)
: SS.
COUNTY OF NEW YORK)

ROBERT BAILEY, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 6 day of Feb. 1970 deponent served the within Appendix upon:

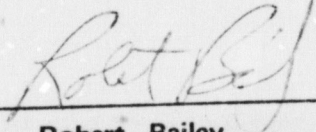
U.S. Atty. So. District of N.Y.

attorney(s) for

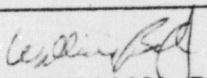
in this action, at

1 St. Andrews Plaza, New York, N.Y. 10037

the address(es) designated by said attorney(s) for that purpose by depositing ^{1 true copy} ~~3 true copies~~ of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.


Robert Bailey

Sworn to before me, this 6
day of Feb., 1970.


WILLIAM BAILEY
Notary Public, State of New York
No. 43-0132945
Qualified in Richmond County
Commission Expires March 30, 1976